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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 **MARY E. BARBOUR AS TRUSTEE FOR**  
15 **THE MARY E. BARBOUR FAMILY**  
16 **TRUST ONE, Derivatively On Behalf of**  
17 **BROCADE COMMUNICATIONS**  
18 **SYSTEMS, INC.,**

19 **Plaintiff,**

20 **vs.**

21 **GREGORY L. REYES, *et al.*,**

22 **Defendants,**

23 **-and-**

24 **BROCADE COMMUNICATIONS**  
25 **SYSTEMS, INC., a Delaware corporation,**

26 **Nominal Defendant.**

Case No. C08-02029 CRB

~~-[PROPOSED]~~ ORDER

27 WHEREAS, on August 2, 2008, Brocade Communications Systems, Inc.  
28 (“Brocade”), through the Special Litigation Committee of its Board of Directors (“SLC”), filed a

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[PROPOSED] ORDER  
CASE NO.: C08-02029 CRB

1 motion seeking to dismiss the Amended Complaint pursuant to Federal Rules of Civil  
2 Procedures 12(b) and 23.1, or, in the alternative, to realign the parties to re-designate Brocade as  
3 the sole party-plaintiff, dismiss the shareholder plaintiff, and stay proceedings in this action  
4 pending further developments in (i) a related, earlier-filed action in this Court captioned *In re*  
5 *Brocade Communications Systems, Inc. Derivative Litigation*, No. C05-02233 CRB (the “Lead  
6 Action”), in which Brocade (through the SLC) has filed a Second Amended Complaint asserting  
7 direct claims arising out of the same matters at issue in this case, and (ii) other related  
8 proceedings; and

9 WHEREAS, on August 3, 2008, Brocade filed a motion to realign the parties and  
10 stay proceedings in another related action pending in the Superior Court for the State of  
11 California, Santa Clara County, captioned *In re Brocade Communications Systems, Inc.*  
12 *Derivative Litigation*, No. 1:05CV041683 (“State Action”); and

13 WHEREAS, plaintiff’s counsel, Johnson Bottini, LLP, has engaged in substantial  
14 legal analysis and negotiations and discussions with counsel for the SLC regarding Brocade’s  
15 motion and the relief sought therein; and

16 WHEREAS, plaintiff’s counsel has had the opportunity to review the SLC’s 127-  
17 page Resolution setting forth the findings of its investigation into the derivative claims asserted  
18 in this action and other related derivative actions; and

19 WHEREAS, as a result of the aforementioned discussions, plaintiff’s counsel’s  
20 review of the Resolution and the Second Amended Complaint, and a review and discussion of  
21 the process by which the SLC conducted its investigation and of the evidence that the SLC  
22 considered, plaintiff supports Brocade’s motion to realign and is satisfied with the SLC’s  
23 independence and good faith and the reasonableness of its investigation; and

24 WHEREAS, plaintiff’s counsel has entered into an engagement agreement (the  
25 “Engagement Agreement”) with Brocade (acting through the SLC) to assist in the prosecution of  
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1 this case and the related derivative litigations as co-counsel to the SLC, which Engagement  
2 Agreement has been submitted to the Court under seal for its *in camera* review; and

3 WHEREAS, pursuant to a stipulation between plaintiff's counsel and Brocade's  
4 counsel (reporting to the SLC) (among others), the Court in the State Action entered an order on  
5 August 12, 2008, realigning the parties in that action, substituting Brocade as the sole party-  
6 plaintiff, dismissing the shareholder plaintiff and staying the State Action pending further  
7 developments in the Lead Action and other related proceedings; and

8 WHEREAS, the individual defendants in the State Action were provided with  
9 notice and an opportunity to object to the realignment and stay in that action; and

10 WHEREAS, on August 15, 2008, the Court in the State Action overruled the  
11 objection submitted by two individual defendants in that case (who are also defendants in the  
12 Lead Action) and reaffirmed its previous order granting realignment and staying the case without  
13 prejudice to the objecting defendants' right to move to vacate the stay; and

14 WHEREAS, a stipulation to realignment of the parties is being entered into  
15 between and among Brocade and the shareholder plaintiffs in the Lead Action; and

16 WHEREAS, plaintiff's counsel and counsel for the SLC have stipulated that the  
17 parties to this action should be realigned, with Brocade re-designated as the sole party-plaintiff  
18 and substituted for the shareholder plaintiff, that the shareholder plaintiff should be dismissed,  
19 and that this action should be stayed pending further developments in the Lead Action and other  
20 related proceedings, and said stipulation has been filed with the Court;

21 NOW, THEREFORE, IT IS HEREBY ORDERED that:

22 1. ~~The return date of the motion to dismiss the Amended Complaint or, in the~~  
23 ~~alternative, to realign the parties and stay proceedings is accelerated from September 19, 2008 to~~  
24 ~~August 21, 2008.~~

25 2. The parties to this action are realigned, with Brocade re-designated as the sole  
26 party-plaintiff and substituted for the shareholder plaintiff.

27 [PROPOSED] ORDER  
28 CASE NO.: C08-02029 CRB

